

interaction; whereby

a cat's interaction with an attractant toy provides for dynamically linked activity among freely-moving multiple attractant toys in various movement stages including non-rhythmically chaotic, rhythmically bouncing and rhythmically revolving;

whereby such forms of movement in attractant toys simulate unpredictable scurrying behaviors of multiple prey and flocking behaviors of multiple prey, such behaviors being intriguing to a cat.

19. The cat toy of claim 18, wherein the cat attractants further comprise simulated prey such as toy mice and where suspension means is accomplished by use of the tails of attractant as an integrated part of the suspension line.
20. The cat toy of claim 18, wherein the cat toy is suspended at a height such that the cat may reach the cat attractants suspended from the bottom tier when the cat toy is not in motion.
21. The cat toy of claim 18, wherein beam ends of each tier are made safe through buffering or other means.

#### **REMARKS - General**

##### **Substituted Title**

By the above amendment, Applicant has amended the title to emphasize the invention's use specifically as an interactive exercise toy for cats and to disavow any assumption of certain aspects of this invention attractive to cats as being attractive characteristics in prior art mobiles differently used.

**Cancellation and Deletion of Summary in Reference to the Claims** - As the claims now submitted are no longer

accurately reflected by this originally submitted summary, applicant requests this section be deleted.

#### **Cancellation and Substitution of Claims**

Applicant has rearranged parts of the originally submitted claims, omitted substantive parts of originally submitted claims which are spoken to in prior art, as well as added language in order to clarify and more distinctly reflect inventive aspects through the presently offered submission, and to address Examiner's stated concerns over similarities with prior art noted as U.S. Patent No. 2,994,156 granted Steiner et al ("the '156' patent").

#### **The Objection To And Rejection Of Claims Numbered 11 And 12 Under 35 U.S.C. 112**

Applicant fully agrees with the Examiner that there is a misuse of the term "bumper" and has corrected it to be reflected by the term "buffer." Applicant offers that this particular object being noted in claims encourages safety consciousness but would comfortably defer to the Examiner's judgment if he or she so determines it is unnecessary language within the claims. This rewritten claim is now numbered claim number 21.

#### **The Objection To And Rejection Of Claim 13 Under U.S.C. 103(a)**

Applicant agrees with Examiner that this claim concerning the choice of coating beams would have been obvious to one having ordinary skill in the art and thus entirely withdraws this claim.

#### **The Objection To And Rejection Of Claims 4 Through 10; 13; 14 And 16 Under 35 U.S.C. 102(b) and 103(a)**

This objection to and rejection of claims concerns Examiner's opinion presently offered invention was anticipated by the Steiner "156" patent for a butterfly mobile attaching to a crib. Applicant agrees with Examiner that claims 4 through 10, 13, 14 and 16 are simply restating of the historically established mobile form and that butterflies, while under different use in this prior art, could be interpreted as prey for a cat. Applicant acknowledges repetition of established parts of a mobile structure may be distracting to the communication in claims of what the invention is. Additionally, applicant further acknowledges the term "cat attractants" and the understanding that a mobile is suspended in an aerial position are commonly understood and therefore unnecessary to detail in claims. In order to not restate established knowledge or that which might be obvious to a person having ordinary skill in the art and to clarify the invention aspects of the presently offered toy for cats, claims 4 through 10, 13, 14 and 16 are withdrawn.

#### **The Objection To and Rejection of Claims 1 Through 3; 15 and 17 Under 35 U.S.C. 102(b) and 103(a)**

A substantial part of the language of claims 1 and 17 also repeat aspects in common with the Steiner "156" mobile. The submitted claim language redundant to Steiner and those familiar with the art has been omitted from herewith submitted rewritten claims where it appears excessive to communicating necessary foundation from which the invention arises. Parts of language from claims 1 and 17 have been rewritten into independent claim 18 and dependent claims 19, 20, and 21 of this requested reconsideration. Additional language to further clarify the

invention, relating to the structure specifically facilitating intriguing motions and characteristics and utilizing previously unanticipated dynamic characteristics intriguing to a cat, are supported by text in the submitted patent application and reflected within substitution claims in order to clarify understanding of what this invention is and does.

Claims 2 and 15, concerning visual proximity of attractants and suspending cat toy at appropriate height for cat interaction, respectively, have been combined into currently submitted claim 18 in this document. These claims are offered by applicant as aspects developed toward the invention's most effective use by cats.

Claim 3, concerning suspending individual cat attractant in downward position using a "tail" as part of the suspension means is important to motion dynamics and effectiveness of this toy for cats and is now submitted in generalized form within claim 18 by which this independent claim is further limited and in more detailed embodiment as claim 19 in rewritten form to better reflect this.

Substitution claims 18, 19, 20, and 21 are intended to replace now withdrawn claims 1 through 3, 15, and 17.

#### **References and Differences of Present Invention Over Prior Art**

Steiner's butterfly mobile for infants and young children which is attached to a crib or other furniture shares some similar elements but substantially diverts in path in its intended affect and use of what appears similar on first look. The currently presented interactive exercise toy for cats utilizes new principles of operation and use.

#### **Steiner Does Not Contain Justification or Suggestion to Support Intentional Use as a Physically Interactive Toy**

Steiner teaches away from his suspended butterfly attractants being interacted with by a child. While for safety reasons they've been secured so as not to be easily loosened, the butterflies themselves are clearly not intended for interaction having wings made of thin transparent plastic (column 2, line 44) which would not hold up to being batted or grasped repeatedly. Steiner specifically mentions the butterflies are secured "in case of contact" while communicating an intention of the mobile being a viewing mobile rather than interactive and certainly does not indicate in any way that interaction is desirable to make best use of as wide a range motions as sought for and effectively provided by the currently submitted interactive cat toy, nor has he given any evidence of considering such uninvited interaction being advantageous for physical exercise for a child were it to occur. The currently submitted interactive toy for cats is fully about a structure promoting and exciting interest in physical interaction for a cat catered specifically to enticing feline instincts. The repertoire of motions in the present application is fundamentally inclusive of the chaotic motion stage resultant from interaction on the part of a cat in its effectiveness, novelty, and unexpected result. This repertoire of motions, resultant from embodied mobile structure, pendulum-like suspended positioning of attractants, and batting interaction, as presented in the current

application, aims for and achieves an entirely different set of mechanical responses than is sought or would be found useful or desirable in Steiner's toy or previous historical use of the multiply accessorized mobile form.

**Steiner Does Not Contain Justification or Suggestion to Support Intentional Use as a Toy for Cats**

Steiner's toy for children is stated as intended as a toy for an infant which is suspended from furniture such as a crib (Steiner patent column 1, lines 14-16). In no place in the patent is there direct or implied language that a similar mobile structure with wildlife-like attractants might be translated into a toy for another species such as cats. Additionally, Steiner's mechanism for suspending the mobile from furniture used by children further supports the use being specific to infants and young children.

**Steiner Does Not Contain Justification or Suggestion to Support Use of Methods for Enhancing Ranges of Motions Beyond the Rhythmic and Essentially Predictable for Attractant Toys or For Suspended Tiers Carrying Suspended Cat Attractants.**

Steiner teaches away from seeking or facilitating wild or unpredictable motions as any part of the motion repertoire. Steiner's intent is shown to be aimed toward subtle motions as the sought after motions as can be understood from his aim to provide a fluttering effect (column 2, lines 48-49). The motion sought after and conceived by Steiner is limited to providing butterfly movements of twisting and fluttering forward and back, implied on an essentially horizontal plane (column 3, lines 1-6). In addition to the more classically expected and generally appealing rhythmic motions typically sought after in mobile devices, the presently submitted interactive toy for cats intentionally facilitates a stage of wild swinging, frenzied, chaotically swarming activity among attractant toys when interacted with by a cat as being of great advantage to perking instinctual and repeated physical interaction on the part of a cat and appealing in particular to feline instincts. As Steiner does not pursue and would find disaffecting chaotic motions in his mobile, he clearly would not seek to accentuate and further facilitate through interaction and pendulum-like attractant suspensions from an open-work mobile structure the non-rhythmic motions simulating a disturbed nest of prey tailored toward provoking instinctual physical feline interaction. Facilitating chaotic motion amongst multiple attractants by interaction would not be viewed as an advantage in Steiner or known related art prior to this particular use in the currently submitted toy for cats. Additionally, Steiner does not seek to add a dynamic of pendulum action inherent to attractant pendulum-like suspension positioning, combining with the also natural dynamics provided in a mobile structure, thereby adding to bounce, eventual rebalancing toward lost rhythm and encouraging momentum; Steiner rather teaches away from this by the use of butterflies with delicate fluttering wings moving essentially in a lateral path of varying direction but essentially a laterally channeled plane with no evidence of having given thought to increasing intensity of or potential random and unpredictable motion moving in all directions among attractants.

**The Novel Features of Claim 18 Produce New and Unexpected Results and Hence are Unobvious and**

### **Patentable Over the Steiner Reference Under 103**

Combining a mobile style device with pendulum-style weight distribution of suspended attractants with active physical interaction on a cat's part brings about surprising results in the repertoire of useful motions for a toy specifically for cats. The device combining these features as presented in this submission adds up to an entirely different motion vocabulary than previously used or discovered in cat toys or previous art. Natural laws provided by linked mobile and pendulum dynamics used in tandem and put toward specific use combine to create an entirely different affect excitingly suited toward eliciting instinctual cat interest and interaction. These dynamics, as facilitated and brought out by this device, exhibit multiple attractants in chaotically dancing motion after interaction evolving into elliptical bouncings and then attractants moving through rhythmically circular motions. The dynamics provided for by the structural method and resultant qualities as presented in claims provides an interactive toy remarkably and satisfyingly responsive to the cat's interaction and physical play.

The linked and freely-moving suspensions with rods and freely moving suspended attractants of a mobile construction allow for the variety of types of motion, varieties of shapes of motion, and varieties of speeds of motion as a whole and among individually suspended attractants. The mobile construction as used in this presently submitted application allows for extreme responsiveness to rambunctious action on it and carried through it as a result of a cat's interaction. Further enhancing and compounding interesting motion dynamics of the mobile structure as used in this toy for cats is the pendulum method of weighting distribution as a complementary method of suspending attractants, most notably using the tail of mice toy attractants as part of the suspension line by means of threading the line through the tail and toy. In addition to enhancing attractive motion dynamics to a cat, this threading through the tail additionally contributes towards its effectiveness in enhancing durability for rugged interactive play as well as contributing further toward safety.

Through access to the lowest tier of attractants, any of which have the potential to translate the overall toy and attractants into wild non-rhythmic and unpredictable motions then evolving into more rhythmic movements, the toy is erratically activated and then able to restore itself to balance for accessible repeated interaction by a cat.

Motion activity carried by the mobile structure when physically interacted with has more deliberately directed chaotic movement by use of the pendulum method of suspending attractants. This pendulum style of weight distribution in suspending individual attractant toys is complementary to and contributes to the extreme effectiveness of this being an immediately and enduringly interactive exercise toy for cats by its further facilitating particular ranges, types of movement, and momentum of movement, within not only the individually suspended attractant toys but the fluid moving structure of the toy as a whole. More notable individual movement via this pendulum affect in individually suspended attractants also allows for a cat's greater discernment of individual toy attractants when toy as a whole is in a swinging flurry of activity, thereby allowing for applied instinct aim toward

a singular toy attractant among the group or scurrying nest and ability to exercise choice in which toy to aim toward batting at. This interactive exercise toy for cats provides not simply improvements but a whole new dynamic and undiscovered use for the instinctual engagement of a cat.

It is by a cat's interaction, specifically, that the structure of this toy and its newly discovered advantages and new use beyond pre-conceived uses of mobiles become so apparent and can be observed. If one imagines or tests out setting a mobile of like characteristics to this hereby submitted interactive exercise toy for cats, setting it in motion not by gently touching it but rather by fairly aggressively bopping (or dragging an attractant and thereby malforming the shape of the mobile structure, then letting it go) or watching the every which way chaotic affect of such solid bop one can observe the resultant motion behaviors. These previously unappreciated movements similar to a disturbed nest flurry of frenzied and erratic behaviors of aerial or ground multiple prey escaping a centrally confined space tap into an untapped instinct raising motion appealing to cats for interaction. This particular simulation of motion being offered in a feline toy has not been approached before within applicant's knowing. Through use of a new principle of operation and making effective use of motions previously not realized as effective interaction stimulators for cats in interactive cat toys, there are successful and unexpected results. Multiple toys responding in chaotic and other varying motions as part of an interactive motion repertoire simulating multiple prey groups in nature has never been recognized as an activating and satisfying instinct perk, in itself, in toys for cats. This advantage has never been appreciated. This simulated activity mimicked by motion behaviors of this interactive toy for cats is an unexpected new result.

#### **Statements from Objective Parties**

One of two companies the applicant has been in contact with concerning this interactive toy for cats repeatedly called it "fantastic" and wants to hear back from applicant if it is patented. The other company, while saying it wouldn't fit in with their product line, said they found it "very clever and quite ingenious." The applicant also had a marketing study done with a reputable company on the "good guys list" of invention and marketing companies. Their very positive evaluation included that they considered it in the "quality of competition" category to be of the highest rating and determined it to be "very superior, obvious advantage" over existing inventions/ideas/products it would compete with. They also evaluated it as "safe," that its "product line possibility" is "moderate, many modifications possible," and that its "overall consumer appeal/demand" would be "high." In the small confidential test market carried out by applicant comments included it being very different and some cats were "wild" for it, among other definite positive response.

#### **Conclusion**

The unobvious and previously unappreciated aspects of use of the open-work mobile structure with pendulum suspended plural attractants as discovered in this interactive toy for cats is manifest in bringing new use, new motion repertoire, and contradiction of "expected" behavior of a mobile and its affects. The initial motion stage initiated through interaction of chaotic and frenetic every which way motion among multiple attractants is not a speeding up of the rhythmic patterns but rather a total disturbance of all rhythms in individual attractant toys and rods alike, a stage prior to where the mobile and pendulum features again start restoring the balance leading to other movement stages. The cat has no preconceived sense of not batting too hard to avoid unsettling the mobile form too much or that only touching it gently to set it in motion as a human does. A cat will interact repeatedly with this interactive exercise toy for cats in giving a full wallop batting motion to an individual attractant thereby bringing about motion forms and activities not previously recognized or sought after. The motions achieved in this solo-interactive exercise toy for cats are of a broader range and different characteristics than are suitable or welcome in other uses established historically for plurally accessorized mobile structures. This combination of elements and use transforms to bring about entirely different results found surprisingly desirable and successful to instinctual interactive feline play.

Such use and mechanically provided dynamics were detailed in discussion and in descriptive sections of the application written by applicant and now in these amended claims. Applicant has amended claims to better reflect the new principles of operation utilized in the previous historically understood concept of method and use of a mobile structured device and such mobile structured device with unexpected advantages as an interactive toy for cats. Such advantage and jump past preconceptions for a structure such as this involves previously untapped use of a wider vocabulary of motions facilitated by this foundational mechanism to simulate natural movements of multiple prey. This simulation, repeatedly described as the non-rhythmic "chaotic motions" and "disturbed nest behavior" in the submitted description of application is a separate stage of motion from the also intriguing and more rhythmic "flocking behavior" stage of mimicked motion, both of which are provided, one through interactive activity and the next through facilitated balancing, momentum and evolvment and important to the interactive toy for cats in the presently submitted application. This interactive exercise toy for cats is surprisingly effective in engaging instincts and keeping interest in continuing physically interactive exercise for a cat.

#### **Conditional Request for Constructive Assistance**

Applicant provides an amended version of claims in response to Examiner's observances so they may be a suitably defining and clear reflection of the novel structure of this interactive toy for cats producing unobvious results. Applicant respectfully requests the assistance and suggestions of the Examiner pursuant to M.P.E.P. 2173.02 and 707.07(j) to address any aspect of this application if seen as needed in order that applicant may promptly provide

proper response toward Office determination of this application being considered appropriate for allowance without need for further proceedings.

Very respectfully,



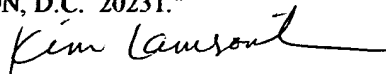
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**Certificate of Mailing:** I certify that on 2004 September 7 this document and referenced attachments, if any, will be deposited with the U.S. Postal Service as first class mail in an envelope addressed to: "BOX AF, ASSISTANT COMMISSIONER FOR PATENTS, WASHINGTON, D.C. 20231."

*September 7, 2004*



**Attachments:**

**Appendix to Amendment Under Rule 116 With Claims Marked to Indicate Changes**

**Some References Appropriate to Unobvious Characteristics Noted in Claims As Contained Within Application**

**Compiled History of Submission, Office Action, Counsel Response and Final Action**





Attachment to Amendment Under Rule 116  
Examiner/GAU: Jordan M. Lofdahl/3644

Appn. No: 10,624,874 (2003, July 22)  
Applicant: Kim Lamson-Schinner  
Interactive Toy for Cats....

MARKED-UP CLAIMS OF CANCELLATION AND SUBSTITUTION

**Claims:** Applicant requests the cancellation of all claims of record (claims 1 through 17) and the substitution of new claims 18 through 21 as follows.

What is claimed is:

1. An interactive toy for cats comprising:  
  
a plurality of vertically sequential tiers, each tier having at least one beam, the beam being substantially horizontal;  
  
each beam of the tiers above the lowest tier having suspended therefrom at least one member selected from the group consisting of: cat attractants, beams and combinations thereof; wherein  
  
each of the beams of the lowest tier having suspended therefrom a plurality of cat attractants; whereby  
  
contact with one cat attractant causes dynamically linked motions of the beams and the other cat attractants, and contact with one beam causes dynamically linked motions of the beams and other cat attractants.
2. The cat toy of claim 1, wherein the cat attractants are in visual proximity to each other.
3. The cat toy of claim 1, wherein the cat attractants further comprise simulated prey suspended at least in part by their tails.
4. The cat toy of claim 1, wherein at least one cat attractant further comprises one member selected from the group consisting of:

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now in claim 18

altered, and now in claim 18

altered, now in claim 19

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spoons, feathers, fabric strips, balls, metal disks, simulated birds, bells, reflective objects, simulated solitary prey, simulated group prey, lights, hookless fishing lures, and combinations thereof.

5. The cat toy of claim 1, further comprising:

suspension means for suspending the cat toy from above, the topmost tier being suspended therefrom.

6. The cat toy of claim 1, further comprising:

a suspension device, the topmost tier being suspended from the suspension device.

7. The cat toy of claim 6, wherein the suspension device further comprises one member selected from the group consisting of: a hook, an eye-hole screw, a bracket and combinations thereof.

8. The cat toy of claim 1, wherein suspension of the tiers is accomplished by means of one member selected from the group consisting of: strips of fabric, monofilament lines, strings, wires, chains and combinations thereof;  
  
wherein such suspension members are strong enough to resist breaking by a prey animal using the cat toy.

9. The cat toy of claim 1, wherein the beams further comprise at least one small notch, and further wherein at least one suspension member wraps around at least one beam at the small notch.

10. The cat toy of claim 1, wherein the suspension members are secured to the beams by means of one member selected from the group consisting of: adhesive, passing through the beams, wrapping around the beams, hooks, swivels, and combinations thereof.

*deleted  
entirely*

11. The cat toy of claim 1, further comprising:  
at least one bumper covering a first end of a first beam.
12. The cat toy of claim 1, wherein the beam end bumper further comprises a cat attractant.
13. The cat toy of claim 1, further comprising:  
  
beam coating covering at least a portion of the beams.
14. The cat toy of claim 1, wherein the cat toy is suspended substantially above a climbing object suitable for climbing by a prey animal, at a height requiring the prey animal to climb the object in order to play with the cat toy.
15. The cat toy of claim 1, wherein the cat toy is suspended at a height such that the prey animal may reach the cat attractants suspended from the bottom tier when the cat toy is not in motion.
16. An interactive toy for cats, the cat toy being rotatably suspended, the cat toy comprising:  
  
a first tier comprising a first beam, the first beam having suspended therefrom at least one additional beam;  
  
at least one beam having suspended and balanced therefrom a plurality of suspended cat cat attractants, wherein  
  
the cat attractants are in visual proximity to each other, whereby dynamically linked responsive motions of the tiers are provided.
17. An improved interactive cat toy, of the suspended type, wherein the improvement comprises:  
  
multiple tiers at different levels;

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term "buffer",  
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claim 21

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claim 20

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a primary axis at the highest tier suspending the remainder of the interactive cat toy; and

a multiplicity of cat attractants suspended symmetrically by weight about the axis of suspension and suspended in vertically layered tiers;

whereby, a multiplicity of cat attractants are suspended in dynamic linkage with one another in order to simulate flocking behavior of prey.

*deleted entirely*

*altered, now in claim 18*

18. A suspended mobile-structured interactive toy for cats comprising:

one or more tiers composed of rotatably suspended beams with a multiplicity of cat attractant toys rotatably suspended from such tiers; wherein

cat attractant toys are suspended symmetrically by weight about the axis of suspension; whereby

such cat attractants are simultaneously within immediate and peripheral visual proximity of each other; whereby

contact with one cat attractant causes dynamically linked motions of the beams and the other cat attractants, and contact with one beam causes dynamically linked motions of the beams and other cat attractants; wherein

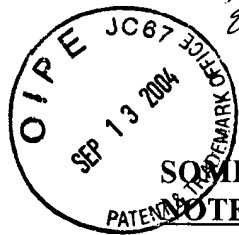
a pendulum method of weighting in each individually suspended attractant further enhances a repertoire of bounce, swing and other motion activity appealing to a cat's instincts for interaction; whereby

a cat's interaction with an attractant toy provides for dynamically linked activity among

freely-moving multiple attractant toys in various movement stages including non-rhythmically chaotic, rhythmically bouncing and rhythmically revolving;

whereby such forms of movement in attractant toys simulate unpredictable scurrying behaviors of multiple prey and flocking behaviors of multiple prey, such behaviors being intriguing to a cat.

19. The cat toy of claim 18, wherein the cat attractants further comprise simulated prey such as toy mice and where suspension means is accomplished by use of the tails of attractant as an integrated part of the suspension line.
20. The cat toy of claim 18, wherein the cat toy is suspended at a height such that the cat may reach the cat attractants suspended from the bottom tier when the cat toy is not in motion.
21. The cat toy of claim 18, wherein beam ends of each tier are made safe through buffering or other means.



Attachment to Amendment Under Rule 116  
Examiner/GAU: Jordan M. Lofdehl/3644

Appn No: 10,624,874 (2003 July 22)  
Applicant: Kim Lamson-Scribner  
Interactive Toy for Cats...

**SOME REFERENCES APPROPRIATE TO UNOBSERVED CHARACTERISTICS  
NOTED IN CLAIMS AS CONTAINED WITHIN APPLICATION**

**Drawings:**

Figure 1 and Figure 3 show vertical, horizontal, and varying cockeyed degrees inclusive of full range of movement action in all directions, up, down, laterally and angled, including chaotic, swing, and bounce motions as well as the more rhythmic stage of movement.

Figure 4 and Figure 5 show pendulum hanging attractant. Figures 1-3 and 6-7 show pendulum hanging attractants in less detail.

**Erratic and unpredictable motion:**

Page 5, line5: By implication, in comparison to prior art of tethered striking ball toy which facilitates erratic and unpredictable motion.

Page 18, lines 13-18: "When the impact is an aggressive batting or tugging of a target toy, the overall toy device responds with its most highly activated stage of movement. This chaotic movement is manifested in seemingly haphazard bouncing and swinging rotations among its various tiers and the toy as a whole. This initially chaotic motion then settles into more balanced rotations of each rod section, alongside calmed activity in the dangling attractant-toys."

**Simulating disturbed nest motions:**

Page 16, line 10: "Prior art has not addressed chaotic and dancing movements, evolving into rhythmically rotating clusters of plural toys, in the way this invention has."

Page 26, lines 20-24: "...a sense of a nest of plural creatures, is enhanced by this toy being predisposed to chaotic movement if tugged or batted. The formations of motion are altered in intensity and direction by aggressive action on the cat's part, thereby imitating behavioral characteristics of interaction with live prey."

Page 28, lines 11-16: "Where there is aggressive batting or tugging action on any dangling toy suspended from an interactively accessible tier, the entire toy is sent into intensified, erratic, spinning, and haphazard rocking motions. In a chaotic movement stage, this toy can sensorially mimic multiple motions imparted by a prey oriented animal landing in a nest of prey with plural prey scurrying toward and away from the animal, in a confusion of multiple individual movements."

Page 30, entire second paragraph, lines 7 - 12: "Another sense of prey is provided in the multiple individual toys in motion. When this toy is aggressively tugged on, the plural prey attractant-toys

swing around and move in an every which way manner of chaotic movement. This provides a sense of landing in a nest or clustered group of prey, and sending them all abruptly scurrying in confused circles and directions. **This confused, multiple-aspected and unpredictable movement of plural prey is a strong enticement for instinctual pursuit and reflexive action.**”

### **Repertoire of Varieties of motion:**

Page 15, lines 22 through page 16, line 3: “Prior art has not involved a unified yet scattered dancing of toys in varyingly accessible proximity for the animal, in intertwining three-dimensional pathways, **as is contained in the present toy invention. Prior art has not provided for interactively-stimulating chaotic motion of multiple elements which then rearrange to more predictable, momentum-maintaining rhythms, thereby allowing for varying degrees of accessible challenge, in the same way.**”

Page 17, lines 15-22: “The forms of motion manifest in various stages ranging from chaotic, pivotal, randomly-oscillatory motions among the tiers of suspended toys, to slower and more rhythmic, **twirling rotations, all of which may vary directionally within each tier. These movements also include cyclically recurring, non-simultaneous, overlapping pathways of traveling tiers as the entire toy revolves. Amid the variations of movement, this toy intrinsically carries evolutions of movement while maintaining natural momentum for a period of continued movement throughout its freely moving parts and whole.**”

Page 17, line 23-24: “The present toy provides for a sense of chaotic movement among a cluster of independently airborne, individual, prey-like, attractant toys in proximal relationship.”

Page 29, lines 4-9: “Additionally, if animal tugs on and maintains their hold on an attractant-toy, they may temporarily stop the action of the toy until letting go. This letting go then causes the toy to activate anew. **Some degree of chaotic or unexpected movement and twirl direction is renewed each time a cat successfully makes contact. Continued follow-up of physical interaction by the cat continually renews and revises motion of the tiers, providing for sustained interest of the animal.**”

Page 1, line 27-29: “The present animal invention contains overlapping, multi-aspected pathways of movement and multi-aspected instinctual triggers. It provides variety in intensity and type of movement within individual parts and as a whole.”

### **Self perpetuating action involves both pendulum and mobile form action:**

Page 32, lines 9-12: “In this toy invention, naturally self-perpetuating movement of the whole complements movement of the parts and vice versa. It takes advantage of characteristics of both pendulum action and mobile form action, utilizing these characteristics toward balance, motion transference, and motion continuation.”

### **Pendulum hanging attractant adding to action and durability:**

Page 31, lines 10-21: "While keeping to a theme of overall lightness in weight in all elements, a slightly greater amount of weight in the dangles can also facilitate momentum. This advantage can be furthered by the shape and distribution of weight within the toy-dangler. If an unevenly weighted toy such as a toy mouse is used, versus a ball of relatively even weight distribution, this uneven weight distribution can be used to further regulate and continue movement. As is true of a pendulum with the more weighted section being at the lower end, a regulated rhythm and force for continued movement can be enhanced. Thus, hanging attractant-toys, such as toy mice, with the direction of their body or area of greatest weight in the downmost position, in a vertically held position in which the tail extends upward and nose points downward, encourages more swing action and momentum. Simultaneous advantage to this directional position in the case of a toy mouse is taking best advantage of pendulum-type energy characteristics, the tail being used as a continuation of the line suspension connector to rod."

Page 38, lines 1-11: "While animal-attractant toys may be dangled in various positions, there are advantages to hanging unevenly weighted toys with their greatest weight in the lowest position. Suspension lines for dangling mice attractant-toys may or may not be combined with and lengthened by use of tail extensions as part of a unified suspension device. A consideration, if using a tail as part of a dangling connector line, is preserving dangling action; this can be realized by combining the tail extension with the dangling connector line, unifying the two materials by threading the line through the tail, or other appropriate method. In this embodiment of toy-dangler construction, the dangler line is threaded through or otherwise affixed in a secure way allowing for free motion. The length of dangler line is best determined by amount of swing the attractant-toy's pendulum weight affords, safety from strangling potential, avoidance of tangling, efficient balancing of rod, and aesthetic sense."

Page 50, line 24 through page 51, line 3: "The dangling toy mice 54 are suspended 52 in part by their tails, with the lower and heavier body parts in the lowermost position, where it appears each mouse is looking down and the cat will be in closest contact with the face of the mouse 54 rather than other body sections."

Page 53, lines 9-11: "The dangling mouse toys 54 are hung in a bottom heavy vertical position where the faces are in the lowest position, and the length of the tail 498 is used as a part of the suspension line system..."

Page 44, line 19 through page 45 lines 3: "If mice-toy dangles are used, hung in part by their tail with the body downward, a strong tail-to-body connection is required to assure the tail and body stay connected when attractant-toy is tugged on. The sturdiness of a tail-to-body connection may be further affirmed by continuing the suspending line through the tail as well as the body of the toy. Another method of reassuring tail-to-body connection is that the toy be assembled with the exterior covering of fur or other material being of one piece rather than assembled parts. This cat toy invention necessarily requires a sturdiness, especially in lower tier level interactive toy dangles, that can resiliently stand up to its being an interactive toy of enduring and keen interest."



### **Used for physical exercise:**

Page 34, lines 10-17: "This toy offers physical exercise in interaction through full body, hind leg, and foreleg stretching; balancing; and reflexive batting at toys; as well as exercising other muscle groups used in climbing or jumping to reach it. It calls for focused exercise of small muscle dexterity, eye/muscle/paw coordination, and reflexes, through physical interaction with dangling toys. This toy provides choice of prey to pursue, exercising both straight-ahead and peripheral vision. It provides opportunity to coordinate physical reflexes with weighted prey, entailing development or use of reflexive evaluation skills. The entertaining challenge and exercise provided by this toy are attuned to a cat's natural instincts and interests."

### **Catered to instincts of cat, specifically:**

Page 5, line 21 through page 6, line 12 (in comparison to prior art child's mobile): "In comparison, the present invention is catered to the instincts and reflexes of a prey oriented animal, and takes a multi-aspected approach in sparking play, development, and satisfaction of these instincts. In the present invention, the individual attractant-toys are instinctually-enhanced by movement in the air as a natural environment for attractant-prey, rather than toys simply being in a suspended state to be noticed and reachable. In the present invention of a cat and other prey oriented animal toy, the two elements of the toys and their movement in a natural territory area are coupled into a relationship of greater, more involving instinct-activating affect beyond the elements themselves. The periodically chaotic form of movement of advantage in the present invention would be a disadvantage in Buttermore's toy. Appropriately, a purpose of interaction for the child's mobile weighs more heavily on the side of less physical activity and more intellectually realized satisfaction. In the present invention, while the toy involves some reflexive problem solving activity and provides for paw-imposed action causing satisfying affect, it also invites more full-bodied involvement and varied physical interaction than Buttermore's toy. The present invention makes use of motion in different ways, aims toward different instincts and purpose, and requires different placement for its specific use."

### **Prior Art comparison to child mobile:**

Page 13, line 5: "Mobiles in prior art generally accommodate gentler, slower, more consistent rotations of movement."

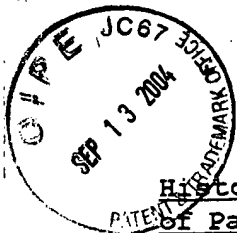
Page 13, line 17 and 18: "In the construction of the present invention, a structural skeleton of mobile form provides a foundational multiple-form movement feature enhancing achievement of its aim and purpose."

Page 13, line 22 through page 14, line 3: "Movements in the present invention range from chaotically bouncing rotations, to further variances in unpredictably activated motion formations of instinct triggering toy relationships, to the more relaxed and predictable yet still challenging rotations where an attractant-toy is more easily accessible for animal interaction. The present

invention provides an intentionally wider range of movement styles than prior art mobiles.”

**Page 14, lines 6-10: “In the present invention, the chaotic movement stage is desirable, where in many mobiles this type of movement would be considered detrimental to their purpose. An advantage of the chaotic movement stage caused by aggressive cat interaction is providing the interacting animal a perception of having disrupted a nest of prey, sending them scurrying in unpredictable, circular directions.”**

**Page 14, lines 15-18: This invention generally differs from prior art mobiles in its animal toy intention, enlivened action and use, various movement stages, multi-dimensional and overlapping instinctual triggering, and in how these parts come together as an instinct and reflex triggering whole.”**

  
History of Submission, Office Action, Counsel Response and Final Action  
of Patent Application No. 10/624,874 on 07/22/2003, Group Art Unit 3644,  
as of 08/24/2004.

(Originally submitted claim:)

What is claimed is:

1. An interactive toy for cats comprising:

a plurality of vertically sequential tiers, each tier having at least one beam, the beam being substantially horizontal;

each beam of the tiers above the lowest tier having suspended therefrom at least one member selected from the group consisting of: cat attractants, beams and combinations thereof; wherein

each of the beams of the lowest tier having suspended therefrom a plurality of cat attractants; whereby

contact with one cat attractant causes dynamically linked motions of the beams and the other cat attractants, and contact with one beam causes dynamically linked motions of the beams and other cat attractants.

(Patent Examiner Office Action Summary 04/07/2004:)

Claim Rejection - 35 USC 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-12 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156).

(Patent Examiner, additionally:)

As to claim 1, Steiner et al. discloses a device comprising a plurality of tiers having at least one horizontal beam, each beam having a cat attractant; each beam of the lowest tier having a plurality of cat attractants (fig. 1). (Examiner further notes disclosed similarities to originally submitted claims 1-12 and 14-17.)

**(Response of Counsel for Applicant 07/07/04:)**

**Rejection of Claims 1-17 (except claim 13) under 35 USC 102:**

The examiner presently rejects the claims 1 through 17 (exception: claim 13) application as being anticipated by US Patent 2,994,156 to Steiner et al ("the '156" patent).

The '156 patent teaches a children's mobile designed for suspension from the rail of a child's crib.

The applicant first respectfully urges that the '156 device is not a relevant item of prior art. While it is somewhat similar in being a suspension of spars and strings, it relates to children's toys, not animal toys. Thus the present invention utilizes "prey animals" for typical house pets to bat at and physically contact while the '156 device uses visually appealing animals such as butterflies which are presumably not "prey" to children.

A number of structural differences may be found as a result of this fundamental difference... (Counsel goes on to address specific claims and such comments are directly organized within each "claim section" of this overall document submitted by applicant.)

...The examiner includes a number of very short sentences in the first office action, rejecting claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, and 15. Original claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, and 15 are now dependent upon amended claim 1, which includes a structure not shown in the prior art, and thus these dependent claims are now allowable as depending from an allowable independent claim.

What is claimed is:

1. (Currently Amended) An interactive toy for cats comprising:

a plurality of vertically sequential tiers, each tier having  
at least one beam, the beam being substantially horizontal;

at least one beam end bumper covering a first end of a first beam;

each beam of the tiers above the lowest tier having suspended

therefrom at least one member selected from the group consisting of: cat attractants, beams and combinations thereof; wherein

each of the beams of the lowest tier having suspended therefrom a plurality of cat attractants; whereby

contact with one cat attractant causes dynamically linked motions of the beams and the other cat attractants, and contact with one beam causes dynamically linked motions of the beams and other cat attractants.

(Patent Examiner Final Rejection of 08/10/04)  
(Detailed Action Response to Arguments:)

In response to applicant's argument that Steiner et al. is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQd 1443 (Fed. Cir. 1992). In this case, the applicant's device is a mobile which is the same art as the prior art.

Applicant argues that the limitation of the suspension member is strong enough to resist breaking by a prey animal is not necessary in a toy mobile. Since the prior art has the same structure it is capable of resisting breaking whether or not the limitation is not necessary for a toy mobile. The definition of a bumper is a device for absorbing shock which is exactly what the end of the beam is capable of doing.

(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102:)

The following is a quotation of the appropriate paragraphs of 35 USC 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 12, 14, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156).

(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102, additionally:)

As to claim 1, Steiner et al. discloses a device comprising a plurality of tiers having at least one horizontal beam; each beam having a cat attractant; each beam of the lowest tier having a plurality of cat attractants (fig. 1) and an end bumper (read as the end of the beam).

**(Originally submitted claim:)**

2. The cat toy of claim 1, wherein the cat attractants are in visual proximity to each other.

**(Patent Examiner Action Summary 04/07/2004:)**

Claim Rejection - 35 USC 102

(as previously noted:)

Claims 1-12 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156). Patent Examiner further notes "disclosed are the cat attractants are visual proximate" as relating to any similarities to Steiner et al.

**(Response of Counsel for Applicant 07/07/04:)**

**Rejection of Claims 1-17 (except claim 13) under 35 USC 102:**

The examiner presently rejects the claims 1 through 17 (exception: claim 13) application as being anticipated by US Patent 2,994,156 to Steiner et al ("the '156" patent)...

...The examiner includes a number of very short sentences in the first office action, rejecting claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, and 15. Original claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, and 15 are now dependent upon amended claim 1, which includes a structure not shown in the prior art, and thus these dependent claims are now allowable as depending from an allowable independent claim.

2. (Original) The cat toy of claim 1, wherein cat attractants are in visual proximity to each other.

**(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102:)**

The following is a quotation of the appropriate paragraphs of 35 USC 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 12, 14, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156).

**(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102, additionally:)**

As to claim 2, disclosed are the cat attractants are visual proximate.

**(Originally submitted claim:)**

3. The cat toy of claim 1, wherein the cat attractants further comprise simulated prey suspended at least in part by their tails.

**(Patent Examiner Office Action Summary 04/07/2004:)**

Claim Rejection - 35 USC 102

(as previously noted:)

Claims 1-12 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156). Patent Examiner further notes "disclosed are prey (fig. 1) as relating to any similarities to Steiner et al.

**(Response of Counsel for Applicant 07/07/04:)**

**Rejection of Claims 1-17 (except claim 13) under 35 USC 102:**

The examiner presently rejects the claims 1 through 17 (exception: claim 13) application as being anticipated by US Patent 2,994,156 to Steiner et al ("the '156" patent)...

...The examiner includes a number of very short sentences in the first office action, rejecting claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, and 15. Original claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, and 15 are now dependent upon amended claim 1, which includes a structure not shown in the prior art, and thus these dependent claims are now allowable as depending from an allowable independent claim.

(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102:)

The following is a quotation of the appropriate paragraphs of 35 USC 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 12, 14, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156).

(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102, additionally:)

As to claim 3, disclosed are prey (fig. 1).

(Originally submitted claim:)

4. The cat toy of claim 1, wherein at least one cat attractant further comprises one member selected from the group consisting of:
- spoons, feathers, fabric strips, balls, metal disks, simulated birds, bells, reflective objects, simulated solitary prey, simulated group prey, lights, hookless fishing lures, and combinations thereof.

(Patent Examiner Office Action Summary 04/07/2004:)

Claim Rejection - 35 USC 102

(as previously noted:)

Claims 1-12 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156). Patent Examiner further notes "disclosed is solitary prey" relating to any similarities to Steiner et al.



**(Response of Counsel for Applicant 07/07/04:)**

**Rejection of Claims 1-17 (except claim 13) under 35 USC 102:**

The examiner presently rejects the claims 1 through 17 (exception: claim 13) application as being anticipated by US Patent 2,994,156 to Steiner et al ("the '156" patent)...

...The examiner includes a number of very short sentences in the first office action, rejecting claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, and 15. Original claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, and 15 are now dependent upon amended claim 1, which includes a structure not shown in the prior art, and thus these dependent claims are now allowable as depending from an allowable independent claim.

4. (Original) The cat toy of claim 1, wherein at least one cat attractant further comprises one member selected from the group consisting of:

spoons, feathers, fabric strips, balls, metal disks, simulated birds, bells, reflective objects, simulated solitary prey, simulated group prey, lights, hookless fishing lures, and combinations thereof.

**(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102:)**

The following is a quotation of the appropriate paragraphs of 35 USC 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 12, 14, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156).

**(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102, additionally:)**

As to claim 4, disclosed is solitary prey.

(Originally submitted claim:)

5. The cat toy of claim 1, further comprising:

suspension means for suspending the cat toy from above, the topmost tier being suspended therefrom.

(Patent Examiner Office Action Summary 04/07/2004:)

Claim Rejection - 35 USC 102

(as previously noted:)

Claims 1-12 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156). Patent Examiner further notes "disclosed is a suspension means" relating to any similarities to Steiner et al.

(Response of Counsel for Applicant 07/07/04:)

**Rejection of Claims 1-17 (except claim 13) under 35 USC 102:**

The examiner presently rejects the claims 1 through 17 (exception: claim 13) application as being anticipated by US Patent 2,994,156 to Steiner et al ("the '156" patent)...

...The examiner includes a number of very short sentences in the first office action, rejecting claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, and 15. Original claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, and 15 are now dependent upon amended claim 1, which includes a structure not shown in the prior art, and thus these dependent claims are now allowable as depending from an allowable independent claim.

5. (Original) The cat toy of claim 1, further comprising:

suspension means for suspending the cat toy from above, the topmost tier being suspended therefrom.

**(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102:)**

The following is a quotation of the appropriate paragraphs of 35 USC 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more

than one year prior to the date of application for patent in the United States.

Claims 1-10, 12, 14, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156).

(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102, additionally:)

As to claim 5, disclosed is a suspension means.

**(Originally submitted claim:)**

6. The cat toy of claim 1, further comprising:

a suspension device, the topmost tier being suspended from the suspension device.

**(Patent Examiner Office Action Summary 04/07/2004:)**

Claim Rejection - 35 USC 102

(as previously noted:)

Claims 1-12 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156). Patent Examiner further notes "disclosed is a suspension device" relating to any similarities to Steiner et al.

**(Response of Counsel for Applicant 07/07/04:)**

**Rejection of Claims 1-17 (except claim 13) under 35 USC 102:**

The examiner presently rejects the claims 1 through 17 (exception: claim 13) application as being anticipated by US Patent 2,994,156 to Steiner et al ("the '156" patent)...

...The examiner includes a number of very short sentences in the first office action, rejecting claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, and 15. Original claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, and 15 are now dependent upon amended claim 1, which includes a structure not shown in the prior art, and thus these dependent claims are now allowable as depending from an allowable independent claim.

6. (Original) The cat toy of claim 1, further comprising:

a suspension device, the topmost tier being suspended from the suspension device.

**(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102:)**

The following is a quotation of the appropriate paragraphs of 35 USC 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 12, 14, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156).

**(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102, additionally:)**

As to claim 6, disclosed is a suspension device.

**(Originally submitted claim:)**

7. The cat toy of claim 6, wherein the suspension device further comprises one member selected from the group consisting of: a hook, an eye-hole screw, a bracket and combinations thereof.

**(Patent Examiner Office Action Summary 04/07/2004:)**

Claim Rejection - 35 USC 102

(as previously noted:)

Claims 1-12 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156). Patent Examiner further notes "disclosed is a hook" relating to any similarities to Steiner et al.

**(Response of Counsel for Applicant 07/07/04:)**

**Rejection of Claims 1-17 (except claim 13) under 35 USC 102:**

The examiner presently rejects the claims 1 through 17 (exception: claim 13) application as being anticipated by US Patent 2,994,156 to Steiner et al ("the '156" patent)...

...The examiner includes a number of very short sentences in the first office action, rejecting claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, and 15.

Original claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, and 15 are now dependent upon amended claim 1, which includes a structure not shown in the prior art, and thus these dependent claims are now allowable as depending from an allowable independent claim.

7. (Original) The cat toy of claim 6, wherein the suspension device further comprises one member selected from the group consisting of: a hook, an eye-hole screw, a bracket and combinations thereof.

**(Patent Examiner Final Rejection of 08/10/04)**  
**(Claim Rejections - 35 USC 102:)**

The following is a quotation of the appropriate paragraphs of 35 USC 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 12, 14, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156).

**(Patent Examiner Final Rejection of 08/10/04)**  
**(Claim Rejections - 35 USC 102, additionally:)**

As to claim 7, disclosed is a hook.

**(Originally submitted claim:)**

8. The cat toy of claim 1, wherein suspension of the tiers is accomplished by means of one member selected from the group consisting of: strips of fabric, monofilament lines, strings, wires, chains and combinations thereof; wherein such suspension members are strong enough to resist breaking by a prey animal using the cat toy.

**(Patent Examiner Office Action Summary 04/07/2004:)**

Claim Rejection - 35 USC 102

(as previously noted:)

Claims 1-12 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156). Patent Examiner further notes "disclosed is a suspension line" relating to any similarities to Steiner et al.

**(Response of Counsel for Applicant 07/07/04:)**

**Rejection of Claims 1-17 (except claim 13) under 35 USC 102:**

...A number of structural differences may be found as a result of this fundamental difference. Firstly, in original claim 8, the limitation is expressed, "such suspension members are strong enough to resist breaking by a prey animal using the cat toy", a limitation not necessary in a toy basically intended for visual use and not physical use. Physical use of mobile elements by children is discouraged: the children may choke upon parts of the toy. For example, in Fig. 1 of the '156 patent, it is seen that the device hangs at a level above the railing of the child's crib, i.e. above the level the child is allowed to reach (since children are also to be prevented from falling out of cribs), and thus is out of reach of the child. This argument is borne out by claim 15 of the present application, which states "suspended at a height such that the prey animal may reach the cat attractants suspended from the bottom tier when the cat toy is not in motion." It would be fatally disastrous if a device without suspensors strong enough to withstand a baby's grasp were suspended at a height at which the baby could reach the bottom tier.

The same arguments apply to those other children's toys cited by the examiner or made of record by the examiner...

(...The examiner presently rejects the claims 1 through 17 (exception: claim 13) application as being anticipated by US Patent 2,994,156 to Steiner et al ("the '156" patent)...) )

...The examiner includes a number of very short sentences in the first office action, rejecting claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, and 15. Original claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, and 15 are now dependent upon amended claim 1, which includes a structure not shown in the prior art, and thus these dependent claims are now allowable as depending from an allowable independent claim.

8. (Original) The cat toy of claim 1, wherein

suspension of the tiers is accomplished by means of one member  
selected from the group consisting of: strips of fabric,  
monofilament lines, strings, wires, chains and combinations  
thereof;

wherein such suspension members are strong enough to resist breaking by a prey animal using the cat toy.

**(Patent Examiner Final Rejection of 08/10/04)  
(Detailed Action Response to Arguments:)**

Applicant argues that the limitation of the suspension member is strong enough to resist breaking by a prey animal is not necessary in a toy mobile. Since the prior art has the same structure it is capable of resisting breaking whether or not the limitation is not necessary for a toy mobile.

**(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102:)**

The following is a quotation of the appropriate paragraphs of 35 USC 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 12, 14, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156).

**(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102, additionally:)**

As to claim 8, disclosed is a suspension line.

**(Originally submitted claim:)**

9. The cat toy of claim 1, wherein the beams further comprise at least one small notch, and further wherein at least one suspension member wraps around at least one beam at the small notch.

**(Patent Examiner Office Action Summary 04/07/2004:)**

Claim Rejection - 35 USC 102

(as previously noted:)

Claims 1-12 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156). Patent Examiner further notes

"disclosed is a suspension member wrapped around a notch (fig. 1)" relating to any similarities to Steiner et al.

(Response of Counsel for Applicant 07/07/04:)

**Rejection of Claims 1-17 (except claim 13) under 35 USC 102:**

The examiner presently rejects the claims 1 through 17 (exception: claim 13) application as being anticipated by US Patent 2,994,156 to Steiner et al ("the '156" patent)...

...The examiner includes a number of very short sentences in the first office action, rejecting claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, and 15. Original claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, and 15 are now dependent upon amended claim 1, which includes a structure not shown in the prior art, and thus these dependent claims are now allowable as depending from an allowable independent claim.

9. (Original) The cat toy of claim 1, wherein the beams further comprise at least one small notch, and further wherein at least one suspension member wraps around at least one beam at the small notch.

(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102:)

The following is a quotation of the appropriate paragraphs of 35 USC 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 12, 14, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156).

(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102, additionally:)

As to claim 9, disclosed is a suspension member wrapped around a notch (fig. 1).



**(Originally submitted claim:)**

10. The cat toy of claim 1, wherein the suspension members are secured to the beams by means of one member selected from the group consisting of:  
adhesive, passing through the beams, wrapping around the beams, hooks, swivels, and combinations thereof.

**(Patent Examiner Office Action Summary 04/07/2004:)**

Claim Rejection - 35 USC 102

(as previously noted:)

Claims 1-12 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156). Patent Examiner further notes "is passing through the beam" relating to any similarities to Steiner et al.

**(Response of Counsel for Applicant 07/07/04:)**

**Rejection of Claims 1-17 (except claim 13) under 35 USC 102:**

The examiner presently rejects the claims 1 through 17 (exception: claim 13) application as being anticipated by US Patent 2,994,156 to Steiner et al ("the '156" patent)...

...The examiner includes a number of very short sentences in the first office action, rejecting claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, and 15. Original claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, and 15 are now dependent upon amended claim 1, which includes a structure not shown in the prior art, and thus these dependent claims are now allowable as depending from an allowable independent claim.

10. (Original) The cat toy of claim 1, wherein the suspension members are secured to the beams by means of one member selected from the group consisting of: adhesive, passing through the beams, wrapping around the beams, hooks, swivels, and combinations thereof.

**(Patent Examiner Final Rejection of 08/10/04)**

**(Claim Rejections - 35 USC 102:)**

The following is a quotation of the appropriate paragraphs of 35 USC 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 12, 14, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156).

(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102, additionally:)

As to claim 10, is passing through the beam.

**(Originally submitted claim:)**

11. The cat toy of claim 1, further comprising:

at least one beam end bumper covering a first end of a first beam.

**(Patent Examiner Office Action Summary 04/07/2004:)**

Claim Rejection - 35 USC 102

(as previously noted:)

Claims 1-12 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156). Patent Examiner further notes "disclosed in an end bumper (read as the end of the beam)" relating to any similarities to Steiner et al.

**(Response of Counsel for Applicant 07/07/04:)**

**Rejection of Claims 1-17 (except claim 13) under 35 USC 102:**

...A number of structural differences may be found as a result of this fundamental difference...

The applicant notes that the '156 device does not appear to have any actual beam end bumpers thereon. The examiner, in rejecting claim 11, made the following statement in the First Office Action: "As to claim 11, disclosed is an end bumper (read as the end of beam)." This is the entire discussion of claim 11 in the First Office Action.

Bumpers are separate structures, located at the end of the beam for safety reasons, which prevent the end of beam from harming anything it may impact (such as a pet's or onlooker's eye). The bumpers are not to be confused with notches or holes at the end of the beams, nor with the simulated prey dangling below the beams. The applicant is unaware of any common device having bumpers which are merely the end of the item: vehicle bumpers are a separate structure of the vehicle, shopping cart bumpers are a defined structure and so on. The applicant

thus rejects the argument that the end of a beam is a bumper, just as the end of a car is not a bumper. Applicant respectfully assumes that this "reading" on the examiner's part is only necessary if the disclosure's structural descriptions of bumpers are not utilized (see the previous section regarding the Section 112 rejection of claim 12).

This limitation from original claim 11 has been brought into amended claim 1 by the applicant's amendment enclosed herewith. Thus, amended claim 1 and all claims dependent therefrom are allowable for containing structure not disclosed by the prior art cited.

11. (Claim withdrawn)

**(Patent Examiner Final Rejection of 08/10/04)  
(Detailed Action Response to Arguments:)**

The definition of a bumper is a device for absorbing shock which is exactly what the end of the beam is capable of doing.

**(Patent Examiner Final Rejection of 08/10/04)  
(Detailed Action Claim Objections:)**

Claims 11, 13 and 14 are objected to because of the following informalities:

Although claims 11, 13 and 14 are stated to be withdrawn, they are not shown in the list of claims. Examiner requests that the text of the claims be shown in the listing of claims or the claims to be cancelled. Appropriate correction is required.

**(Originally submitted claim:)**

12. The cat toy of claim 1, wherein the beam end bumper further comprises a cat attractant.

**(Patent Examiner Office Action Summary 04/07/2004:)**

Claim Rejection - 35 USC 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specifications shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 recites the limitation "beam end bumper". There is insufficient antecedent basis for this limitation in the claim.

(Patent Examiner, additionally:)

**Claim Rejection - 35 USC 102**

(as previously noted:)

Claims 1-12 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156). Patent Examiner further notes "disclosed in the end bumper comprising a cat attractant (fig. 1)" relating to any similarities to Steiner et al.

**(Response of the Law Office of Craig W. Barber:)**

**Rejection of Claim 12 under 35 USC 112:**

The examiner presently rejects claim 12 as unsupported by the specification, stating that there is insufficient antecedent basis for "beam and bumper". The applicant very respectfully draws the examiner's attention to the fact that this term may be found in the disclosure in the three paragraphs spanning pages 20 and 21, which utilize the exact language of the claims. Additional more detailed discussions of bumpers, and diagrams thereof, may be found in the diagrams Fig. 5 and Fig. 6, and in the discussions thereof. For example, at page 43, lines 8 through 10:

The ends of the rods are protected from being potential pointers by use of plastic bumpers, ball bumpers, feathers, or softening by some other means.

Other references provide further details at page 52, line 19, onto page 53. And additional other references occur at page 23, page 24 and other places in the application document. The applicant believes these more than adequately describe the function and structures of such beam end bumpers.

For that reason, applicant earnestly urges that the limitation in claim 12 is fully supported by the original disclosure, and is allowable.

(The examiner presently rejects the claims 1 through 17 (exception: claim 13) application as being anticipated by US Patent 2,994,156 to Steiner et al ("the '156" patent)...)

...The examiner includes a number of very short sentences in the first office action, rejecting claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, and 15. Original claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, and 15 are now dependent upon amended claim 1, which includes a structure not shown in the prior art, and thus these dependent claims are now allowable as depending from an allowable independent claim.

12. (Original) The cat toy of claim 1, wherein the beam end bumper  
further comprises a cat attractant.

**(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102:)**

The following is a quotation of the appropriate paragraphs of 35 USC 102 that form the basis for the rejections under this section made in this Office

action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 12, 14, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156).

(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102, additionally:)

As to claim 12, disclosed is the end bumper comprising a cat attractant (12).

(Originally submitted claim:)

13. The cat toy of claim 1, further comprising:

a beam coating covering at least a portion of the beams.

(Patent Examiner Office Action Summary 04/07/2004:)

Claim Rejections - 35 USC 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office Action.

(A) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steiner et al. (2994156).

As to claim 13, not disclosed is a coated beam. It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise a coated beam, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

(Response of Counsel for Applicant 07/07/04:)

**Rejection of Claims 1-17 (except claim 13) under 35 USC 102:**

...A number of structural differences may be found as a result of this fundamental difference...

In regard to rejection of independent claim 16, this claim has been modified to include the additional element discussed below in reference to the rejection of claim 13 (a coating), and thus is allowable for containing structure not disclosed by the prior art cited.

In regard to rejection of independent claim 16, this claim has been modified to include the additional element discussed below in reference to the rejection of claim 13 (a coating), and thus is allowable for containing structure not disclosed by the prior art cited.

(Continued Response of Counsel for Applicant 07/07/04:)

**Rejection of Claim 13 under 35 USC 103:**

The examiner presently rejects claim 13 under the obviousness doctrine of 35 USC Section 103. In particular, the examiner refers to the coating of the beams with a layer of material (for safety) and states that this is a selection of a known material on the basis of suitability for the intended use.

However, the cited doctrine properly applies in cases in which an element of the claim is present in the prior art and the material used in the element is merely altered or a different material for the element is selected. The examiner skips over the issue of whether any beam coating exists in the prior art: the examiner has so far not cited prior any prior art having the element listed, that is, the coating is not present in the relevant prior art. Original claim 13 states as follows:

13. The cat toy of claim 1, further comprising:

beam coating covering at least a portion of the beams.

A dependent claim differentiates over the independent claim it cites when it introduces some new limitation over the independent claim. In this case the language "further comprises" is used, indicating the addition of a new element: a coating. The relationship of the coating to the beam is taught, ("covering at least a portion") and the distinction between a coating and a beam becomes self evident.

The prior art cited and made of record does not disclose any coating disposed upon the beams thereof. Therefore the material of the coating is irrelevant and questions about the obviousness or lack thereof of the material skip over the more important issue of whether the prior art even discloses the element at all.

This limitation is incorporated into amended claim 16, and therefore, claim 16 is now allowable for citing structure not present in the prior art.

13. (Claim withdrawn)

**(Patent Examiner Final Rejection of 08/10/04)  
(Detailed Action Claim Objections:)**

Claims 11, 13 and 14 are objected to because of the following informalities:

Although claims 11, 13 and 14 are stated to be withdrawn, they are not shown in

the list of claims. Examiner requests that the text of the claims be shown in the listing of claims or the claims to be cancelled. Appropriate correction is required.

(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 103:)

...Not disclosed (in Steiner fig. 1) is a beam coating. It would have been obvious to one having ordinary skill in the art at the time the invention was made to paint the beam which would be read as a beam coating to create a more aesthetically pleasing device.

(Originally submitted claim:)

14. The cat toy of claim 1, wherein the cat toy is suspended substantially above a climbing object suitable for climbing by a prey animal, at a height requiring the prey animal to climb the object in order to play with the cat toy.

(Patent Examiner Office Action Summary 04/07/2004:)

Claim Rejection - 35 USC 102

(as previously noted:)

Claims 1-12 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156). Patent Examiner further notes "disclosed is a device capable of being placed above a climbing object" relating to any similarities to Steiner et al.

(Response of Counsel for Applicant 07/07/04:)

**Rejection of Claims 1-17 (except claim 13) under 35 USC 102:**

...A number of structural differences may be found as a result of this fundamental difference...

In regard to rejection of original independent claim 17, the applicant has amended this claim to include a climbable object as a requirement rather than merely a device capable of being placed above a climbable object. The examiner has rejected originally filed claim 14, which merely claimed a device capable of being placed above a climbable object, but that limitation is now changed to include the climbable object. Thus, the limitation included in amended claim 16 is similar to but not the same as that stated previously in claim 14. The difference is that the climbable object is now a direct limitation of the claim. Thus, amended claim 16 is allowable for containing structure not disclosed by the prior art cited.

(...The examiner presently rejects the claims 1 through 17 (exception:

claim 13) application as being anticipated by US Patent 2,994,156 to Steiner et al ("the '156" patent)...

...The examiner includes a number of very short sentences in the first office action, rejecting claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, and 15. Original claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, and 15 are now dependent upon amended claim 1, which includes a structure not shown in the prior art, and thus these dependent claims are now allowable as depending from an allowable independent claim.

14. (Claim withdrawn)

(Patent Examiner Final Rejection of 08/10/04)  
(Detailed Action Claim Objections:)

Claims 11, 13 and 14 are objected to because of the following informalities:

Although claims 11, 13 and 14 are stated to be withdrawn, they are not shown in the list of claims. Examiner requests that the text of the claims be shown in the listing of claims or the claims to be cancelled. Appropriate correction is required.

(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102:)

The following is a quotation of the appropriate paragraphs of 35 USC 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 12, 14, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156).

(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102, additionally:)

As to claim 14, disclosed is a device capable of being placed above a climbing object.

(Originally submitted claim:)

15. The cat toy of claim 1, wherein the cat toy is suspended at a height such



that the prey animal may reach the cat attractants suspended from the bottom tier when the cat toy is not in motion.

**(Patent Examiner Office Action Summary 04/07/2004:)**

Claim Rejection - 35 USC 102

(as previously noted:)

Claims 1-12 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156). Patent Examiner further notes "disclosed is a device capable of being placed where an animal can contact it" relating to any similarities to Steiner et al.

**(Response of Counsel for Applicant 07/07/04:)**

**Rejection of Claims 1-17 (except claim 13) under 35 USC 102:**

...A number of structural differences may be found as a result of this fundamental difference...

In regard to rejection of independent claim 16, this claim has been modified to include the additional element discussed below in reference to the rejection of claim 13 (a coating), and thus is allowable for containing structure not disclosed by the prior art cited.

In regard to rejection of independent claim 16, this claim has been modified to include the additional element discussed below in reference to the rejection of claim 13 (a coating), and thus is allowable for containing structure not disclosed by the prior art cited.

15. (Original) The cat toy of claim 1, wherein the cat toy is suspended at a height such that the prey animal may reach the cat attractants suspended from the bottom tier when the cat toy is not in motion.

**(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102:)**

The following is a quotation of the appropriate paragraphs of 35 USC 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 12, 14, 15 and 17 are rejected under 35 U.S.C. 102(b) as being

anticipated by Steiner et al. (2994156).

(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102, additionally:)

As to claim 15, disclosed is a device capable of being placed where an animal can contact it.

(Originally submitted claim:)

16. An interactive toy for cats, the cat toy being rotatably suspended, the cat toy comprising:

a first tier comprising a first beam, the first beam having suspended therefrom at least one additional beam;

at least one beam having suspended and balanced therefrom a plurality of suspended cat attractants, wherein

the cat attractants are in visual proximity to each other, whereby dynamically linked responsive motions of the tiers are provided.

(Patent Examiner Office Action Summary 04/07/2004:)

Claim Rejection - 35 USC 102

(as previously noted:)

Claims 1-12 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156). Patent Examiner further notes "disclosed is a first tier with a beam with a beam suspended from it; a plurality of cat attractants and visibly proximate each other (fig. 1)" relating to any similarities to Steiner et al.

(Response of Counsel for Applicant 07/07/04:)

Rejection of Claims 1-17 (except claim 13) under 35 USC 102:

...A number of structural differences may be found as a result of this fundamental difference...

In regard to rejection of independent claim 16, this claim has been modified to include the additional element discussed below in reference to the

rejection of claim 13 (a coating), and thus is allowable for containing structure not disclosed by the prior art cited.

(Continued Response of Counsel for Applicant 07/07/04:)

Rejection of Claim 13 under 35 USC 103:

The examiner presently rejects claim 13 under the obviousness doctrine of 35 USC Section 103. In particular, the examiner refers to the coating of the beams with a layer of material (for safety) and states that this is a selection of a known material on the basis of suitability for the intended use.

However, the cited doctrine properly applies in cases in which an element of the claim is present in the prior art and the material used in the element is merely altered or a different material for the element is selected. The examiner skips over the issue of whether any beam coating exists in the prior art: the examiner has so far not cited prior art having the element listed, that is, the coating is not present in the relevant prior art. Original claim 13 states as follows:

13. The cat toy of claim 1, further comprising:  
beam coating covering at least a portion of the beams.

A dependent claim differentiates over the independent claim it cites when it introduces some new limitation over the independent claim. In this case the language "further comprises" is used, indicating the addition of a new element: a coating. The relationship of the coating to the beam is taught, ("covering at least a portion") and the distinction between a coating and a beam becomes self evident.

The prior art cited and made of record does not disclose any coating disposed upon the beams thereof. Therefore the material of the coating is irrelevant and questions about the obviousness or lack thereof of the material skip over the more important issue of whether the prior art even discloses the element at all.

This limitation is incorporated into amended claim 16, and therefore, claim 16 is now allowable for citing structure not present in the prior art.

16. (Currently Amended) An interactive toy for cats, the cat toy being rotatably suspended, the cat toy comprising:

a first tier comprising a first beam, the first beam having  
suspended therefrom at least one additional beam;

beam coating covering at least a portion of one of the beams;

at least one beam having suspended and balanced therefrom a  
plurality of suspended cat attractants, wherein

the cat attractants are in visual proximity to each other,  
whereby dynamically linked responsive motions of the tiers are  
provided.

**(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 103:)**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steiner et al. (2994156).

As to claim 16, disclosed is a first tier comprising a first beam, the first beam having at least one additional beam suspended from it (fig. 1); at least one beam having a plurality of cat attractants (28 and 27) in visual proximity together. Not disclosed is a beam coating. It would have been obvious to one having ordinary skill in the art at the time the invention was made to paint the beam which would be read as a beam coating to create a more aesthetically pleasing device.

**(Originally submitted claim:)**

17. An improved interactive cat toy, of the suspended type, wherein the improvement comprises:

multiple tiers at different levels;

a primary axis at the highest tier suspending the remainder of the interactive cat toy; and a multiplicity of cat attractants suspended symmetrically by weight about the axis of suspension and suspended in vertically layered tiers:

whereby, a multiplicity of cat attractants are suspended in dynamic linkage with one another in order to simulate flocking behavior of prey.

**(Patent Examiner Office Action Summary 04/07/2004:)**

Claim Rejection - 35 USC 102

(as previously noted:)

Claims 1-12 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156). Patent Examiner further notes "disclosed are multiple tiers; a primary axis; multiple attractants" relating to any similarities to Steiner et al.

(Response of Counsel for Applicant 07/07/04:)

**Rejection of Claims 1-17 (except claim 13) under 35 USC 102:**

...A number of structural differences may be found as a result of this fundamental difference...

In regard to rejection of original independent claim 17, the applicant has amended this claim to include a climbable object as a requirement rather than merely a device capable of being placed above a climbable object. The examiner has rejected originally filed claim 14, which merely claimed a device capable of being placed above a climbable object, but that limitation is now changed to include the climbable object. Thus, the limitation included in amended claim 16 is similar to but not the same as that stated previously in claim 14. The difference is that the climbable object is now a direct limitation of the claim. Thus, amended claim 16 is allowable for containing structure not disclosed by the prior art cited.

17. (Currently Amended) An improved interactive cat toy, of the suspended type, wherein the improvement comprises:

multiple tiers at different levels;

a primary axis at the highest tier suspending the remainder of the interactive cat toy; and

a multiplicity of cat attractants suspended symmetrically by weight about the axis of suspension and suspended in vertically layered tiers;

a climbing object suitable for climbing by a prey animal, the cat toy suspended substantially above the climbing object at a height requiring the prey animal to climb the object in order to play with the cat toy;

whereby, a multiplicity of cat attractants are suspended in dynamic

linkage with one another in order to simulate flocking behavior of prey.

**(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102:)**

The following is a quotation of the appropriate paragraphs of 35 USC 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 12, 14, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (2994156).

**(Patent Examiner Final Rejection of 08/10/04)  
(Claim Rejections - 35 USC 102, additionally:)**

As to claim 17, disclosed are multiple tiers and levels; a primary axis (22) at the highest tier suspending the remainder of the interactive toy; a plurality of cat attractants (25) suspended symmetrically by weight about the axis of suspension and suspended in vertically layered tiers (fig. 1); and a climbing object (16).

**(Patent Examiner Final Rejection of 08/10/04)  
(Conclusion:)**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from this mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(1) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jordan Lofdahl whose telephone number is 703.605.1217. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached on 703.306.4198. The fax phone number for the organization where this application or proceeding is

assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Carone